

§ 178.65

order also must state the reason for that denial (e.g., why the request for a hearing did not conform to §178.27, or why the request was denied under §178.32).

(c) Each order published under paragraph (a) of this section must state its effective date.

[55 FR 50291, Dec. 5, 1990, as amended at 70 FR 33359, June 8, 2005]

Subpart C [Reserved]

Subpart D—Judicial Review

§ 178.65 Judicial review.

An order issued under §178.37 is final agency action reviewable in the courts as provided by FFDCA section 408(h), as of the date of publication of the order in the FEDERAL REGISTER. The failure to file a petition for judicial review within the period ending on the 60th day after the date of the publication of the order constitutes a waiver under FFDCA section 408(h) of the right to judicial review of the order and of any regulation promulgated by the order.

[70 FR 33359, June 8, 2005]

§ 178.70 Administrative record.

(a) For purposes of judicial review, the record of an administrative proceeding that culminates in an order under §178.37 consists of:

(1) The objection ruled on (and any request for hearing that was included with the objection).

(2) Any order issued under §180.7(g) of this chapter to which the objection related, and:

(i) Any regulation or petition denial that was the subject of that order.

(ii) The petition to which such order responded.

(iii) Any amendment or supplement of the petition.

(iv) The data and information submitted in support of the petition.

(v) The notice of filing of the petition.

(3) Any order issued under §180.29(f) of this chapter to which the objection related, the regulation that was the subject of that order, and each related Notice of Proposed Rulemaking.

40 CFR Ch. I (7–1–11 Edition)

(4) Any comments submitted by members of the public in response to the Notice of Filing or Notice of Proposed Rulemaking, any data or information submitted as part of the comments, the Administrator's response to comments and the documents or information relied on by the Administrator in issuing the regulation or order.

(5) All other documents or information submitted to the docket for the rulemaking in question.

(6) The order issued under §178.37.

(b) The record will be closed as of the date of the Administrator's decision unless another date for closing of the record is specified in the order issued under §178.37.

[55 FR 50291, Dec. 5, 1990, as amended at 70 FR 33359, June 8, 2005]

PART 179—FORMAL EVIDENTIARY PUBLIC HEARING

Subpart A—General Provisions

Sec.

179.3 Definitions.

179.5 Other authority.

Subpart B—Initiation of Hearing

179.20 Notice of hearing.

179.24 Ex parte discussions; separation of functions.

Subpart C—Participation and Appearance; Conduct

179.42 Notice of participation.

179.45 Appearance.

179.50 Conduct at oral hearings or conferences.

Subpart D—Presiding Officer

179.60 Designation and qualifications of presiding officer.

179.70 Authority of presiding officer.

179.75 Disqualification of deciding officials.

179.78 Unavailability of presiding officer.

Subpart E—Hearing Procedures

179.80 Filing and service.

179.81 Availability of documents.

179.83 Disclosure of data and information.

179.85 Purpose of preliminary conference.

179.86 Time and place of preliminary conference.

179.87 Procedures for preliminary conference.

179.89 Motions.

179.90 Summary decisions.